

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DONNA NEWTON,

Plaintiff,

v.

WALMART INC., a Delaware Corporation,

Defendant.

NO. 3:21-cv-05191-BJR

**PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

Plaintiff, Donna Newton, alleges the following claims for relief against Defendant, Walmart Inc.:

**I. PARTIES**

1. At all times relevant to the factual allegations herein, Plaintiff, Donna Newton ("Plaintiff"), was an individual residing in Clark County in the city of Amboy, Washington.

2. At all times relevant to the factual allegations herein, Defendant, Walmart Inc. was a foreign Delaware Corporation whose principal place of business is at 702 SW 8th Street, Bentonville, AR 72716.

3. At all times relevant to the factual allegations herein, Defendant Walmart Inc. was in possession of, owned, operated, repaired, maintained, and controlled a Walmart Supercenter retail store number 5929 located at 1201 SW 13th Ave, Battle Ground, WA 98604 in Clark County, Washington.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 USC §§1332.

5. The amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000, and the action is between parties with complete diversity of citizenship.

6. Plaintiff's claims arose in Clark County, WA, making venue appropriate in the United States District Court in the Western District of Washington, Tacoma Division under 28 USC §§1391.

III. FIRST CAUSE OF ACTION

(Common Law Negligence – Premises Liability)

7. Plaintiff realleges and incorporates by reference paragraphs 1 to 6.

8. Defendant Walmart Inc. owes a legal duty to exercise reasonable care and make its premises safe for customers, who are business invitees.

9. Defendant Walmart Inc. owes a legal duty to take reasonable precautions to protect its customers from foreseeable dangers.

10. Defendant Walmart Inc. owes a legal duty to use reasonable diligence in preventing merchandise from falling on and injuring customers.

11. Defendant Walmart Inc. owes a legal duty to train employees on proper safety measures and how to identify and eliminate dangerous conditions.

12. Defendant Walmart Inc. owes a legal duty to discover unsafe conditions that pose an unreasonable risk of harm to customers.

13. Defendant Walmart Inc. owes a legal duty to warn customers of dangerous, defective and unsafe conditions.

1           14.     One of Defendant Walmart Inc.'s business practices is to place large and/or  
2 bulky merchandise on the highest area of shelves for storage.

3           15.     Defendant Walmart Inc.'s business practice of placing large and/or bulky  
4 merchandise on the highest area of shelves for storage created an unreasonable risk of harm for  
5 customers.

6           16.     Defendant Walmart Inc.'s business practice of storing merchandise on top of  
7 shelves without taking necessary steps to prevent merchandise from falling created a defective,  
8 dangerous, and unsafe condition.

9           17.     Defendant Walmart Inc. owes a duty to take necessary steps to prevent  
10 merchandise from falling off of shelves onto customers.

11          18.     Defendant Walmart Inc. knew or should have known that placing merchandise  
12 high on shelves could cause merchandise to fall and injure customers.

13          19.     On or about August 12, 2018, Plaintiff was a lawful entrant, customer and  
14 business invitee of Defendant Walmart Inc.'s retail store number 5929 located at 1201 SW  
15 13th Ave, Battle Ground, WA 98604 in Clark County, Washington.

16          20.     While Plaintiff was shopping in Defendant's retail store, merchandise that had  
17 been negligently placed and stored on top of shelves fell and landed on Plaintiff without  
18 warning, causing severe and permanent injuries to her head and body.

19          21.     Defendant Walmart Inc. breached its duties to Plaintiff when it created a  
20 defective, dangerous, and unsafe condition.

21          22.     Defendant Walmart Inc. breached its duties to Plaintiff by failing to maintain its  
22 premises in a manner that would create a safe shopping environment.

23. Defendant Walmart Inc. breached its duties to Plaintiff when it failed to prevent merchandise from falling on and harming Plaintiff.

24. Defendant Walmart Inc. breached its duties to Plaintiff when it failed to properly train employees to prevent merchandise from falling and harming customers.

25. Defendant Walmart Inc.'s breach of its duties created a defective, dangerous and unsafe condition that was a proximate cause of Plaintiff's injuries and resulting damages.

26. Defendant Walmart Inc.'s breach was the proximate cause of Plaintiff's physical injuries, pain and suffering, emotional injuries and other damages, thereby entitling her to damages in amounts to be proven at trial and determined by a jury.

WHEREFORE, Plaintiff, Donna Newton, prays for an award judgment in her favor and against Defendant, Walmart Inc. as follows:

1. For non-economic damages in an amount to be proven at the time of trial.
2. For economic damages in an amount to be proven at the time of trial.
3. For costs and disbursements incurred herein; and
4. For such other relief as this Court deems just and proper.

Dated: August 2, 2021

GOLDBEG & LOREN, P.A.



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*Counsel for Plaintiff Donna Newton*

**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused service of a true and correct copy of the Plaintiff's First Amended Complaint in the manner indicated below to:


Rodney L. Umberger, Esq.  
Eddy Silverman, Esq.  
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☒ E-Mail *per E-Service Agreement*

***Counsel for Defendant Walmart Inc.***

Dated: August 2, 2021

GOLDBERG & LOREN, P.A.

By   
Israel Lopez, Legal Assistant